

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

FEDERAL TRADE COMMISSION,

Plaintiff,

Civil No. No. 04-377

v.

SEISMIC ENTERTAINMENT
PRODUCTIONS, INC.,
SMARTBOT.NET, INC., and
SANFORD WALLACE,

**STIPULATED JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AS TO DEFENDANT
SEISMIC ENTERTAINMENT
PRODUCTIONS, INC.**

Defendants.

Plaintiff Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), on October 6, 2004. The FTC’s Complaint charged the Defendant Seismic Entertainment Productions, Inc. (“Seismic”), and others, with violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

The Commission and Defendant Seismic, by and through its Chapter 7 bankruptcy trustee Steven M. Notinger (the “Chapter 7 Trustee”), have agreed to the Court’s entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) to resolve all matters of dispute between them in this action.

NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendant Seismic, by and

through the Chapter 7 Trustee, having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. The Commission brought this action pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b). The Commission seeks both permanent injunctive relief and consumer redress and/or disgorgement against Defendant Seismic for Defendant Seismic’s alleged unfair or deceptive acts or practices in connection with its operation of Internet websites, distribution of software, and marketing of anti-spyware products.

2. This Court has jurisdiction over the subject matter of this case and over Defendant Seismic.

3. The Complaint states a claim upon which relief may be granted against Defendant Seismic under Section 5(a) and 13(b) of the FTC Act, as amended, 15 U.S.C. §§ 45(a) and 53(b).

4. Venue is proper in the District of New Hampshire under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

5. The activities of Defendant Seismic are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

6. On October 4, 2004, Defendant Seismic filed a voluntary petition for relief under the liquidation provisions of Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the District of New Hampshire, Case No. 04-13523-JMD (“Bankruptcy Case”). That same date, Steven M. Notinger was appointed as Defendant Seismic’s Chapter 7 Trustee. Defendant Seismic has ceased all business activities and the Trustee has liquidated

Seismic's assets.

7. The Commission's action against Defendant Seismic, including the enforcement of a judgment other than a money judgment obtained in this action, is not stayed by 11 U.S.C. § 362(a)(1), (2), (3) or (6) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exemption from the automatic stay.

8. Defendant Seismic has waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

9. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

10. The Commission and Defendant Seismic waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant Seismic further waives and releases any claim it may have against the Commission, its employees, agents, and representatives.

11. Entry of this Order is in the public interest.

I. CESSATION OF BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendant Seismic shall not engage in any business and the Chapter 7 Trustee shall not seek authority to operate the business of Defendant Seismic pursuant to Section 721 of the Bankruptcy Code, 11 U.S.C. § 721, by conversion of the Bankruptcy Case to a Chapter 11 reorganization case pursuant to Section 706, 11 U.S.C. § 706, or otherwise.

II. PROHIBITION ON SELLING OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant Seismic and the Chapter 7 Trustee are

permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit or debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to Defendant Seismic at any time prior to entry of this Order in connection with Defendant Seismic's operation of Internet websites, distribution of software, and marketing of anti-spyware products, **provided**, **however**, that Defendant Seismic, by and through the Chapter 7 Trustee, may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. **Provided further** that the Chapter 7 Trustee shall immediately abandon or dispose of any such customer list by transferring such list, including all copies, to the FTC. This injunction shall continue after the Bankruptcy Case is closed and the Trustee has been discharged.

III. CORPORATE BOOKS AND RECORDS

IT IS FURTHER ORDERED that the Chapter 7 Trustee shall provide notice to the FTC of the proposed abandonment or disposition of the corporate books and records of Defendant Seismic and, upon the FTC's request, the Chapter 7 Trustee shall transfer such books and records to the FTC.

IV. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that the Chapter 7 Trustee, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

V. WITHDRAWAL OF FTC'S PROOF OF CLAIM

IT IS FURTHER ORDERED that, within ten (10) business days of receipt of this Order as entered by the Court, the FTC shall withdraw its proof of claim filed in Defendant Seismic's Chapter

7 liquidation case on March 31, 2005, and assigned claim number 13, and will not participate in any distribution in the case.

VI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes, including the construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 11th day of October, 2005.

/s/ Joseph A. DiClerico, Jr.
UNITED STATES DISTRICT JUDGE
JOSEPH A. DICLERICO

The parties hereby stipulate and agree to the terms and conditions set forth above and consent to the entry of this Stipulated Final Judgment and Order for Permanent Injunction As to Defendant Seismic Entertainment Productions, Inc.

Dated: September 14, 2005

Respectfully submitted:

FOR THE FEDERAL TRADE COMMISSION:

WILLIAM BLUMENTHAL
General Counsel

/s/ Laura M. Sullivan
Laura M. Sullivan (New York Bar No.2919660)
Charulata Pagar (Illinois Bar No. 6209680)
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001
Tel. (202) 326-3327/2791
Fax. (202) 326-3259

FOR SEISMIC ENTERTAINMENT PRODUCTIONS, INC.:

/s/ Steven M. Notinger

Steven M. Notinger, Esq.
Chapter 7 Trustee for Defendant Seismic
Donchess & Notinger PC
402 Amherst Street, Suite 204
Nashua, New Hampshire 03063
Tel. (603) 886-7266

CERTIFICATE OF SERVICE

I, Laura M. Sullivan, certify that on September 14, 2005, I caused a copy of the Stipulated Judgment and Order for Permanent Injunction As To Defendant Seismic Entertainment Productions, Inc. to be served electronically, by means of the Court's ECF system, upon the following counsel:

Ralph A. Jacobs, Esq.
Ralph A. Jacobs & Associates LLC

Wilbur A. Glahn, III, Esq.
McLane, Graf, Raulerson & Middleton

Martha Van Oot
Orr & Reno

W. Scott O'Connell
Nixon Peabody LLC

/s/ Laura M. Sullivan

Laura M. Sullivan, Esq.
New York Bar No. 2919660
Federal Trade Commission
600 Pennsylvania Avenue NW
Room NJ-3204
Washington, D.C. 20580
(202) 326-3327 (phone)
(202) 326-3259 (fax)
lsullivan@ftc.gov

Dated September 14, 2005